

JCT introduced technical corrections bill (HR 6264; S 4026) that will eliminate the entire IC-DISC benefit for all S-corporations, LLCs, and sole proprietorships. The proposed amendment to IRC Section 1(h)(11) will also scale back the IC-DISC benefit to C-corporations to such an extent that only a very few will be able to justify the administrative cost to set up and run the program.

With very limited exceptions, the IC-DISC program only benefits small, closely-held businesses. Why the JCT would propose to cut the heart out of this program is a great mystery.

Both the Legislative and Executive branches of our Government have struggled for years with the European Community over our very limited international trade incentives, forcing the US to scale back the DISC (now IC-DISC), eliminate the FSC, eliminate the Extraterritorial Income Exclusion (EIE), and finally to eliminate the very modest phase out program that was embedded in our original EIE repeal. Repeatedly, our trading partners have leveraged technical language in our GATT commitments to duck the good faith accommodations reached between US and EU in bilateral negotiations.

The position of our trading partners is all the more outrageous given the significant disadvantage the US faces in taxation on international trade as the export of US goods face the full burden of both income taxes and VAT, while products imported into the US from the EU and other OECD trading partners escape the value added taxes that provide nearly 50% of revenues to the FISCs of those trading partners. The US signed the WTO related trade agreements which exempted consumption (i.e. VAT) taxes from general prohibition against Income tax based export incentives.

IC-DISC was designed to, and did, satisfy our major trading partners by limited the benefits to smaller US companies and providing for an interest charge on deferred taxes. By an unrelated stroke of the legislative pen, the DISC benefit was improved, and became available to a larger segment of the US economy, pass-through entities. Hurray!

IC-DISC will not likely come under strong attack from the EU because it does not benefit our largest, most competitive, and best capitalized businesses. How can the JCT justify unilaterally taking away the small remaining benefit for US companies?

If Congress wants to prevent the very few behemoth companies who can now benefit from IC-DISC, it can do so very, very simply (contact me if you want to know how), or through some other more complicated legislative action. It is certainly not good policy to eliminate what Congress has fought for for years and finally has, albeit in a form which cannot easily benefit large public companies.

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